IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1140 OF 2006

Vasparr Fischer Ltd. & Anr. ...Petitioners

Vs.

Kairoos Minoo Bhaya & Anr. ...Respondents

Shri A.P.Mundargi, Senior Counsel i/by Shakuntala Joshi for the Petitioners.

Shri U.V.Nikam, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : AUGUST 18, 2006.

P.C.:

1. Heard Shri Mundargi, learned Senior Counsel appearing for the Petitioners. The Petitioners are accused in a complaint filed by the first Respondent under section 138 of the Negotiable Instruments Act, 1881. The order of process issued by the learned Magistrate on the said complaint was challenged by the Petitioners by filing a Revision Application in the Sessions Court. The Revision Application has been rejected.

2. The learned Senior Counsel appearing for the Petitioner submitted that on the plain reading of the complaint no case was made out for issuing process. He submitted that legally enforceable debt is not in

existence.

3. I have considered the submissions made by the learned Senior Counsel. While considering the question of issuing process in a complaint under section 138 of the said Act of 1881, the complaint is required to be read as a whole. If the substance of the allegations made in the complaint fulfil the requirements of section 138, process is required to be issued. The Apex Court has held that in construing a complaint under section 138 of the said Act of 1881, hyper-technical approach should not have adopted considering the object of section 138 of preventing bouncing of cheques and sustaining the credibility of the commercial transactions.

4. What is argued before me is the defence of the Petitioners to the complaint. The said defence will have to be established by leading evidence for the purposes of rebutting the presumption under section 139 of the said Act of 1881. No case is made out for interferencce. Writ Petition is rejected. It is made clear that the observations which are made by the Revisional Court as well as this Court are for limited

purpose of considering the challenge to the order issuing process and all contentions on merits in the complaint are expressly kept open.

JUDGE